

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2277 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMSING BUDHIYABHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioner
MS DS PANDIT, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/09/2000

ORAL JUDGEMENT

1. The petitioner seeks direction on the respondents that they should operate the select list for the posts of

Talati-cum-Mantri which was prepared in April 1985 and should make further appointments from that list on the footing that it continued to operate. A direction is also sought on the respondents that they should not proceed with the advertisement issued for filling in the said posts of Talati-cum-Mantri only from the scheduled caste and scheduled tribe candidates.

2. According to the petitioner in pursuance to an advertisement which was issued on 11/10/1983 at Annexure-A to the petition, he had applied for the post of Talati-cum-Mantri in the Baroda District Panchayat and after being interviewed in April 1985 he came to be selected and was placed in the select list at serial no. 167. According to the petitioner he belongs to a scheduled tribe community. However, though the petitioner's name was placed in the select list, he was not given an appointment and in January 1991 a fresh advertisement was issued as per Annexure-F to the petition for filling in the posts only from amongst the scheduled caste and scheduled tribe candidates. According to the petitioner the select list of 1985 could not be implemented earlier in view of the ban which was imposed by the State Government against the appointments for fiscal reasons. However, after the ban was lifted by the circular dated 7/7/1989, the petitioner should have been appointed.

3. It was strongly contended on behalf of the petitioner that the petitioner having been placed in the select list was entitled to be appointed to the said post. It was argued that there was nothing to show that the list of 1985 was cancelled and in absence of any material showing that a decision was taken to cancel the earlier list, the concerned authority could not have issued any fresh advertisement for preparing a new select list from amongst the scheduled caste and scheduled tribe candidates. It was contended that the very fact that fresh a advertisement was issued for as many as 48 posts in respect of Baroda District Panchayat showed that there was sufficient number of vacancies which could have been filled in from the existing list and since the petitioner belongs to a scheduled tribe community, he ought to have been accommodated from the existing list, instead of inviting applications from scheduled castes and scheduled tribes candidates for the new list. It was submitted that the fact that a ban was imposed on fresh recruitment could not have taken away the right of the petitioner for being appointed to the said post and when the said ban was lifted in 1989 the petitioner became entitled to such appointment. Reliance was placed on the decision of this

Court in Dilipbhai Kuberdas v/s. Vice Chancellor, Gujarat Agricultural University (Special Civil Application No. 7287/1991 decided on 28/1/1992), gist of which is reported in 1992 (1) G.L.H. (UJ) 11 at page 19, by the learned counsel in support of his contentions.

4. The learned counsel appearing for the respondent Panchayat, on the other hand, contended that the list could not have perpetually operated and that even its extended date had expired on 31/3/1990 creating the requirement of preparing a fresh list. It was submitted that since the vacancies were required to be filled in from amongst the candidates belonging to scheduled castes and scheduled tribes the advertisement had to be issued only for making the appointments from these sources. It was submitted that persons who were on the list earlier prepared had no right to appointment especially when the list was required to be prepared only for filling in 100 vacancies, while the petitioner's name was at serial no. 167. The learned counsel relied upon the decisions of the Supreme Court in the case of Surinder Singh v. State of Punjab reported in (1997) 8 Supreme Court Cases p.488, Madanlal v. State of J & K reported in (1995) 3 Supreme Court Cases p. 486 and Gujarat State Dy. Executive Engineers' Asson. v. The State of Gujarat & Ors. reported in JT 1994 (3) S.C. 559 in support of his contentions.

5. Admittedly, the petitioner's name stood at serial no. 167 of the select list for the post of Talati-cum-Mantri, which was prepared in April 1985. It is also an admitted fact that as per advertisement at Annexure-A to the petition select list was to be prepared only in respect of 100 vacancies for the said district. The ban which was imposed against recruitment came to be lifted by virtue of the circular dated 7/7/1989 at Annexure-G to the petition. By that circular it was directed that the life of the existing select list and wait list which were prepared for the years 1985-86, 1986-87 and 1987-88 was extended upto 31/3/1990 or till the availability of the regularly selected candidates, whichever was earlier. It is a common ground that these orders were applicable even in respect of the said list. On 12/6/1989 the Government issued a resolution specifically applicable to Panchayat services deprecating the practice of preparing a common select and wait list and directing that the Panchayat Selection Board should prepare a select list commensurate with the number of vacancies that may arise till the month of December of the relevant year. It was emphasized that the advertisement should be issued only in respect of the

vacancies which are likely to arise by the end of the year and that no candidate should be appointed from the list to any vacancy, which is not so notified. The earlier circulars were cancelled and it was also directed that the vacancies required to be filled up by scheduled caste and scheduled tribe candidates should be carried forward. In para. 6 of the resolution it was specifically provided that the life of the wait list would be one year or the date of announcement of the result of the next selection process, whichever may be earlier. In this context, provisions of rule 9(4) of the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 may be noted. Under that rule for the purpose of direct recruitment the D.D.O. is required to collect information as regards the number of posts to be filled in and then submit the requisition to the Board or the Selection Committee, as the case may be. Thus, when the advertisement was issued for 100 posts, ordinarily the select list ought to have been prepared only of 100 candidates. The petitioner's name occurred at serial no. 167 and in absence of the requisite number of vacancies, there was no question of appointing the petitioner. As held by the Supreme Court in Surinder Singh's case (supra) waiting list cannot be used as a perennial source of recruitment for filling up the vacancies not advertised. The candidates in the waiting list have no vested right to be appointed except to the limited extent when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. The candidates included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly. The ratio of this decision clearly would apply to the present case where the petitioner's name was at serial no. 167. When the posts advertised were only 100, it would hardly make any difference if a common select and wait list was prepared, because, the candidates beyond the number of vacancies that had arisen even if shown in the same list, cannot claim any appointment as a matter of right. None of the persons below the petitioner's rank was appointed and, in fact, 66 persons above him were also not appointed. Therefore, this is not a case where any discrimination has been practised against the petitioner. The petitioner's turn simply did not reach because he ranked much below the number of vacancies which were required to be filled in. In Madanlal's case (supra) it was held that if requisition for recruitment was for 11 vacancies and the merit list prepared was for 20 candidates, the moment 11 vacancies were filled in from the merit list the list got exhausted, or if during the span of one year from the date of publication of such

list all vacancies were not filled in, the moment that year was over the list would get exhausted. In the present case the life of the list was extended till 31/3/1990 or till the result of the next selection was announced whichever was earlier, since the orders issued by the Government in respect of civil services were also applicable to the Panchayat services. Therefore, after lifting of the ban the select list expired on 31/3/1990 which justified issuance of a fresh advertisement in the year 1991 in respect of the vacancies which were required to be filled in from amongst the scheduled castes and scheduled tribes candidates, which process has a constitutional backing and can hardly be challenged on the ground that all the carried forward posts could not have been advertised for being filled in from amongst scheduled castes and scheduled tribes candidates.

In this view of the matter there is no substance in this matter and the petition is, therefore, rejected. Rule is discharged with no order as to costs.

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PVR.